

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JUAN CARLOS ARBELAEZ-AGUDELO, :  
: Civil Action No. 10-5654 (RMB)  
Petitioner, :  
: **OPINION and ORDER**  
v. :  
:   
UNITED STATES OF AMERICA, :  
:   
Respondent. :

**APPEARANCES:**

Petitioner pro se  
Juan Carlos Arbelaez-Agudelo  
Reg. No. 0757-424  
FCI Fort Dix  
P.O. Box 2000

**BUMB**, District Judge

Petitioner, confined at FCI Fort Dix, in Fort Dix, New Jersey, has submitted for filing to the Clerk of this Court a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and an application to proceed in forma pauperis. The sole named respondent is the United States of America.

Among other things, 28 U.S.C. § 2242 requires the petition for a writ of habeas corpus to allege "the name of the person who has custody over [the petitioner]." See also 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."). "[T]hese

provisions contemplate a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." Wales v. Whitney, 114 U.S. 5674, 574 (1885) (emphasis added).

Under the circumstances of this case, the warden of the facility where the petitioner is held is an indispensable party respondent, for want of whose presence the petition must be dismissed.

It appearing that Petitioner has failed to name as a respondent an indispensable party, the warden of the facility in which he is confined;

IT IS on this 26th day of January 2011,

**ORDERED** that Petitioner's application to proceed in forma pauperis is hereby granted pursuant to 28 U.S.C. § 1915(a); and it is further

**ORDERED** that the Clerk of the Court shall file the Petition without prepayment of fees or security; and it is further

**ORDERED** that the Petition shall be DISMISSED without prejudice; and it is further

**ORDERED** that, if Petitioner wishes to reopen this action, he shall so notify the Court within 45 days of the date of entry of this Order, in writing addressed to the Clerk of the Court,

Mitchell H. Cohen Building and U.S. Courthouse, Fourth and Cooper Streets, Camden, New Jersey, 08101; Plaintiff's writing shall include an amended petition naming the warden of the facility in which he is confined as a party respondent; and it is finally

**ORDERED** that the Clerk of the Court shall close the file in this matter.

s/Renée Marie Bumb  
Renée Marie Bumb  
United States District Judge